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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,934

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Brian Gay

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EXAMINER

LOUIS, LATOYA M

ART UNIT

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DELIVERY MODE

05/24/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,934	Applicant(s) GAY, BRIAN	
	Examiner LATOYA LOUIS	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/9/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This office action is responsive to the amendment filed 4/24/2006. As per the amendment, claims 3, 4, 6- 8, 10-18, 22-26, and 28 have been amended. No claims were added. Thus claims 1-28 are currently pending.

Claim Objections

The amendment to the claims filed on 4/24/2006 does not comply with the requirements of 37 CFR 1.121(c) because “claim 1” in claim 17 line 2 and claim 18 line 2 is not underlined. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the limitations “the reservoir wall” on line 3 and “the wall of the cavity” on line 4 lack antecedent bases.

Regarding claim 18, the limitation “the vessel” on line 3 lacks antecedent basis.

Regarding claim 23, the limitation “devoid of means for connecting to mains water and/or sewer” is unclear. What structure is devoid of means for the connection? If the reservoir is devoid of means for connecting to mains water, how is the reservoir filled with liquid?

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Regarding claim 24, the limitation “a cavity adapted to replace a cavity” on line 1 is unclear and indefinite. Since a cavity is an open space, how can a cavity replace another cavity? What structure is being claimed?

Regarding claim 25, the recitation “a cavity adapted for use in retrofitting a hydrotherapy apparatus, the retrofitting being capable of producing an apparatus according to claim 1” is unclear and indefinite. How can a cavity form an apparatus? How can a cavity retrofit a hydrotherapy apparatus?

Claims 2-17, 19-23, and 26-28 are rejected for their dependency on a rejected claim.

4. Claims 26-27 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the steps required for treating an extremity. How is the extremity treated using the apparatus of claim 1? What must be done to the extremity for treatment to occur? How is the apparatus used? What steps are involved in the use of the apparatus?

Claims 26 and 27 are rejected for their dependency on a rejected claim and for incorporating the above errors.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 28 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The recitation on line 2 “wherein at least a portion of the extremity of the body is higher than the heart” includes human body parts within its scope.

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A claim directed to or including within its scope a human is not considered to be patentable subject matter under 35 U.S.C. 101. The grant of a limited, but exclusive property right in a human being is prohibited by the Constitution. In re Wakefield, 422 F.2d 897, 164 USPQ 636 (CCPA 1970).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 10-15, 17, 18, 22, 23, 26, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Cartier (3,977,396).

Regarding claim 1, Cartier teaches from fig. 1 an apparatus for treating an extremity of a body, the apparatus including a reservoir (1) adapted to contain a liquid (col. 1 lines 63-64), the reservoir wall having a cavity (the opening into sleeve 12 as cavity) adapted to receive the extremity (15) of the body, wherein the wall of the cavity is at least partially composed of a flexible material (col.1 line 56).

Regarding claim 2, Cartier discloses that the flexible material is capable of transferring pressure from the liquid to the extremity (col. 2 lines 7-11).

Regarding claim 3, Cartier discloses that the flexible material is substantially impermeable to the liquid (col. 1 lines 22-24).

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Regarding claim 10, Cartier teaches that the entire cavity is composed of a flexible material (A shown by figs. 1 and 2, the entire sleeve 12 is uniformly made of the same material. col. 1 line 56 discloses that the material is flexible).

Regarding claim 11, Cartier teaches from fig. 2 that the cavity (the opening to sleeve 12) is generally cylindrical.

Regarding claim 12, Cartier teaches from fig. 2 that the cavity (12) is substantially sock-shaped (As shown, the cavity has a sole 17 and flares out at the bottom like a sock).

Regarding claim 13, Cartier teaches from fig. 2 that the cavity (12) is substantially boot-shaped (As shown, the cavity resembles a boot).

Regarding claim 14, Cartier teaches from fig. 2 that the cavity (12a) is substantially glove-shaped (the cavity has 5 fingers and a hand portion which resembles a glove).

Regarding claim 15, Cartier teaches from fig. 2 that the cavity (12a) has the shape of an elongated glove (As shown, the 5 finger and hand portion are integral with an arm portion which together resembles an elongated glove).

Regarding claim 17, Cartier discloses that the reservoir and cavity forms a sealed vessel such that the liquid is not capable of escape (col.1 lines 56-60 discloses that the sleeve is impermeable and is fluid tightly sealed to the top of the reservoir 1 thus liquid is not able to escape).

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Regarding claim 18, Cartier discloses one jet capable of propelling the liquid within the vessel (col. 1 lines 31-38 discloses propelling the fluid through the pipe adjacent inlet 11 as jet or alternatively through the pipe adjacent inlet 3 as jet).

Regarding claim 22, Cartier teaches from fig. 1 a secondary reservoir (4), wherein the reservoir (1) and the secondary reservoir (4) are connected such that the liquid can be interchanged between the reservoir and the at least one secondary reservoir (col. 1 lines 47-50).

Regarding claim 23, Cartier teaches from fig. 1 that the apparatus is devoid of means for connecting to mains water.

Regarding claim 26, Cartier discloses a method for treating an extremity of a body using the apparatus (col.1 lines 65-68).

Regarding claim 28, as best understood, Cartier teaches treating an extremity wherein a portion of the extremity is higher than the heart (col. 2 line 22 discloses treating an arm which includes portions higher than the heart).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cartier.

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Regarding claims 4-6, 8, and 9, Cartier discloses that the sleeve is composed of a flexible impermeable material (col. 1 line 56) but does not specifically disclose the flexible material is a sheet-like plastic (claim 4) , polyvinyl chloride or low density polyethylene (claim 5), sailcloth (claim 6) , natural or synthetic rubber (claim 8), nor is selected from the group consisting nitrile rubber, silicone rubber, fluorosilicone rubber, butyl rubber, polybutadine rubber, neoprene rubber, hypalon, EPDM, viton, polyurethane, and latex (claim 9). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to manufacture the flexible impermeable material of Cartier with any one of the materials of sheet-like plastic, polyvinyl chloride or low density polyethylene, sailcloth, natural or synthetic rubber, or a material selected from the group consisting nitrile rubber, silicone rubber, fluorosilicone rubber, butyl rubber, polybutadine rubber, neoprene rubber, hypalon, EPDM, viton, polyurethane, and latex as such would be considered a design choice since the materials are old and well known in the art and would perform equally well in the apparatus of Cartier.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cartier in view of Kuiper et al. (2003/0191420 A1).

Regarding claim 7, Cartier discloses a flexible material treating an extremity under pressure (col. 2 lines 5-10) but does not specifically disclose the flexible material is resilient. However, Kuiper teaches that the flexible sleeve is elastic as resilient ([0062] lines 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to manufacture the sleeve of Cartier with an elastic material as taught by Kuiper to provide greater ease in removing an extremity after treatment.

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11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cartier in view of Dahlquist (6,027,464).

Regarding claim 16, Cartier teaches from figs. 1 and 2, a leg-shaped sleeve (12) but does not completely disclose that the cavity has the shape of a pair of trousers. However, Dahlquist teaches from figs. 1 and 10 an envelope 4 (cavity) with a trouser shaper portion surrounding the user's legs. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the cavity of Cartier with the trouser shape as taught by Dahlquist to allow for treatment of multiple extremities at the same time.

12. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cartier in view of Delluc (4,432,355).

Regarding claims 19, 20, and 21, Cartier discloses a jet for propelling the liquid (col. 1 lines 31-38) but does not specifically disclose that the jet is capable of propelling a liquid at a pressure of at least 2 bar (claim 19), at least 3 bar (claim 20), or at least 4 bar (claim 21). However, Delluc teaches a device for hydrotherapy massage comprising a jet for propelling the liquid between 4 and 8 bars (col. 2 lines 1-5, 14-16, and 24-28). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the jets of Cartier with the ability to propel liquid at the pressures taught by Delluc since such pressures are known in the art of hydrotherapy massage to provide an effective massaging force (col. 1 lines 36-38 of Delluc and would perform equally well).

13. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cartier in view of Hamilton et al. (7,160,316).

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Regarding claim 24, as best understood, Cartier does not specifically disclose a replaceable cavity. However, it is apparent that Cartier's apparatus is capable of being replaced simply by throwing away and old apparatus and then obtaining a new one. To any extent that Cartier's apparatus is not replaceable, Hamilton teaches an apparatus with a replaceable cavity (col. 9 lines 65-66, col. 14 lines 40-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the apparatus of Cartier with a cavity capable of being replaced as taught by Hamilton for better hygiene and in case one breaks.

Regarding claim 25, as best understood, the modified Cartier teaches a replaceable cavity for retrofitting a hydrotherapy apparatus (col. 2 lines 37-38 of Cartier and col. 9 lines 65-66, col. 14 lines 40-43 of Hamilton).

14. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cartier in view of Gary et al. (6,695,800 B1).

Regarding claim 27, Cartier discloses applying therapy to an extremity (col. 1 lines 22-24) but does not specifically disclose placing a skin care substance or medicament into the cavity or directly onto the extremity. However, Gary teaches placing a skin care substance or medicament into the cavity (col. 3 lines 37- 43) or directly onto the extremity (col. 1 lines 20-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the treatment fluid of Cartier with the skin care substance as taught by Gary to provide addition therapy to the skin (col. 3 lines 40-43 of Gary).

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Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Garrioch (6,315,696) discloses a liquid immersion therapeutic device with a cavity.

Maunier (5,672,148) discloses a hydrotherapy device for massage of the human body.

Baus (4,274,400) discloses a massaging device with jet pressures up to 3.5 bar.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATOYA LOUIS whose telephone number is (571)270-5337.

The examiner can normally be reached on Monday-Friday, 9:30am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine YU can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATOYA LOUIS/
Examiner, Art Unit 3771
5/20/2010

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

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